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RENEWED PETITION UNDER 37 CFR 1.181

In re the application of: DI PIETRO, Juan C.

Serial N°: 09/981,812.

Filed: 19 October 2001

Title: ADAPTOR DEVICE FOR DOMESTIC SHOOTING PRACTICE WITH
LARGE-CALIBRE HANDGUNS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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RENEWED PETITION TO WITHDRAW ABANDONMENT

The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

This is a response to your decision dated 24 August 2005 to dismiss my petition for the holding of abandonment to be withdrawn.

The decision is flimsily grounded. The statements and evidence submitted in my earlier petition have not been justly pondered.

Non-reception of mail is a non-action that leaves no evidence other than the lack of a response. It is not like no rain that leaves evidence of drought. It is like if yourself, Sir, had to prove that you didn't read a certain newspaper on a specific date several months ago; you could prove that you did by relating printed headlines or news articles but you could not prove conclusively that you didn't. This is a similar situation: I am being required to provide non-existent proof, to provide a nothing from the past, to provide something that I cannot have if what I am upholding is true, i.e. I am being subjected an impossible task. I cannot go back in time and have my mailbox photographed and inventoried on the days I was supposed to receive your mail, develop the photograph, call a couple of witnesses and have them sign it all.

But I have submitted positive evidence, including all the evidence mentioned by Mr. Carone on the telephone to obtain a favorable reconsideration of your holding, comprising: an affidavit by the sole person in charge of opening the mailbox at my given address in my absence, samples of correspondence proving our given address and copies of office actions acknowledged as received at the address.

This evidence does not seem to have been considered in view of that the first full paragraph on page 2 of your decision under response requests that applicant submit the evidence that I had already submitted earlier. Moreover, there appears to be no fault in that bona fide evidence and it has not been rejected.

The last paragraph on page 2 is incorrect. In my earlier petition I did submit available documentary evidence of USPTO mail received at my given address. In fact, the exhibits included correspondence misaddressed by the USPTO; in spite of that this is strong evidence in my favor, your decision does not even mention it.

As to the other evidence mentioned in said paragraph, I am an independent inventor prosecuting a single patent application in the USPTO and therefore do not keep methodical records as a typical law firm operating in intellectual property.

The other main evidence pointing in my favor is, of course, that nine dollars is quite an insubstantial amount not to pay and imperil one's rights to an invention on which one, an independent inventor, logically has high hopes. I am no millionaire of course, I work hard for my bread day after day, but it is preposterous to presume that I would voluntarily forego paying \$9.00 (since paid as you know) for something in which I had already invested much more, if not my own time and resources, at least in the application filing fee itself.

As I said, as an independent inventor, if I had received the official action requesting the \$9.00, I would have gone out and paid it as soon as possible, not wasting time docketing due dates and the like as if it were an examination report requiring review, research, etc. Willfully not paying said fee would have indicated a desire to abandon the application which would be contradictory to my attempts all these months to have the application reinstated, further evidence to my assertion that I did not receive the official letter.

On the other hand, what I have proved beyond doubt is that the USPTO has erred in misaddressing (street name and number bundled together with addressee's name) its correspondence to me. Therefore, the factual evidence of USPTO misaddressing fatally undermines the normal presumption that mail was delivered.

May I add that I am indeed taken aback by you doubting my good faith on no evidence. By simply presuming that I did receive your mail when I am positively affirming that I did not is tantamount to you assuming me a liar. I believe I have given you no grounds for such an assumption.

In conclusion I respectfully submit that the grounds for dismissing my earlier petition fall flat on their faces and that the application should be revived on the face of the comparatively more reasonable grounds I have submitted in this ongoing petition.

Respectfully requested



Juan C. Di Pietro
Inventor

Date: 10 October 2005